IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
MISC. CIVIL APPLICATION No 1750 of 2003
For Approval and Signature:
HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINAXIBEN RAMESHCHANDRA DAVE
Versus
YOGESH RATILAL PANDYA

Appearance: MR GM JOSHI for the Petitioner.
MR DHAVAL D VYAS for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2004
ORAL JUDGEMENT

Rule. With the consent of the parties, the matter is taken up for final hearing today.

The present petition is filed by the petitioner, who is the wife of present respondent, with a prayer that the petition filed by the respondent, being H.M.P. No.12 of 2003, which is pending before the Court of Civil Judge (Senior Division), Porbandar be transferred to the Court of Civil Judge (Senior Division), Surendranagar.

The respondent-husband has filed the aforesaid HMP before the Court of Civil Judge (Senior Division), Porbandar, for judicial separation. It is not in dispute that the present petitioner has also filed a suit, being Special Civil Suit No.69 of 2000, which is pending in the

Court of Civil Judge (Senior Division). This MCA is filed by the wife on the ground that the proceedings before the Court of Civil Judge (Senior Division), Porbandar, be transferred to the Court of Civil Judge (Senior Division), Surendranagar.

The respondent, at present, is residing at Vidyanagar and, admittedly, he is not residing at Porbandar. Mr.Vyas submitted that, at the relevant time, the husband was residing at Porbandar and, therefore, the HMP was filed before the Court of Civil Judge (Senior Division), Porbandar.

Considering the fact that the petitioner has filed a suit for maintenance before the Court of Civil Judge (Senior Division), Surendranagar, and considering the fact that the respondent himself is residing at Vidyanagar, which is nearer to Surendranagar, as compared to Porbandar, it is desirable that both the said proceedings, i.e. Special Civil Suit No.69 of 2000, filed by the wife, and HMP No. 12 of 2003, filed by the husband, be heard together by the same Court.

Under the circumstances, HMP No.12 of 2003, pending before the Court of Civil Judge (Senior Division), Porbandar is ordered to be transferred to the Court of Civil Judge (Senior Division), Surendranagar, and after such transfer, the said HMP is to be heard with Special Civil Suit No.69 of 2000 filed by the petitioner-wife. Both the said proceedings be accordingly disposed of by the same Judge, i.e. Civil Judge (Senior Division), Surendranagar. Mr.Vyas, for the respondent, however, submitted that the respondent has filed an application for reviewing the order of maintenance. However, this Court is not concerned with the said proceedings. If any such application is filed, it is for the concerned Court to decide the same in accordance with law.

Similarly, if any application for execution of the maintenance order is filed, the same also be heard on its own merits and in accordance with law. On this, this Court is not supposed to express any opinion, as, this MCA is restricted only qua the proceedings regarding transfer of HMP No.12 of 2003, pending before the Court of Civil Judge (Senior Division), Porbandar to the Court of Civil Judge (Senior Division), Surendranagar.

This MCA is accordingly allowed. Rule is accordingly made absolute with no order as to costs.

Writ to be sent to the concerned courts forthwith.

5th February, 2004 (P.B. Majmudar, J.)

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(apj)